

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 12-O-18019-DFM
	)	
RUBEN F. SANCHEZ,	)	DECISION INCLUDING DISBARMENT
Member No. 118309,	)	RECOMMENDATION AND
	)	INVOLUNTARY INACTIVE
A Member of the State Bar.	)	ENROLLMENT ORDER
	)	

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INTRODUCTION

Respondent **Ruben F. Sanchez** (Respondent) is charged here with violating virtually all of the conditions of probation, including an obligation to make monthly restitution payments to a former client, as he was ordered to do by the California Supreme Court in March 2011.

Respondent has now admitted that he has failed to comply with those obligations. That probation, and the attendant discipline, resulted from Respondent's earlier violation of virtually all of the same conditions of probation resulting from a Supreme Court order in October 2008. In view of Respondent's ongoing misconduct, notwithstanding two separate orders of discipline by the Supreme Court, the court recommends, inter alia, that he be disbarred from the practice of law.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on January 3, 2013. Respondent did not file a response to the NDC. However, he

participated in the initial status conference in the case and, on the eve of trial, entered into a stipulation of facts covering virtually all of the facts alleged in the NDC.

At the initial status conference, held on February 11, 2013, the case was scheduled to commence trial on May 1, 2013. Trial was commenced and completed as scheduled. The State Bar was represented at trial by Deputy Trial Counsel Elizabeth Gonzalez. Respondent acted as counsel for himself.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The following findings of fact are based on the stipulation of undisputed facts filed by the parties and on the documentary and testimonial evidence admitted at trial.

#### **Jurisdiction**

Respondent was admitted to the practice of law in California on June 11, 1985, and has been a member of the State Bar at all relevant times.

#### **Case No. 12-O-18019**

On October 1, 2008, the California Supreme Court filed an order in case No. S165556, suspending Respondent for one year and until he pays and provides proof of restitution to Cruz Hernandez in the amount of \$31,000 plus interest, the execution of the suspension was stayed, and he was placed on three years' probation, with conditions. This discipline was imposed because Respondent had borrowed \$20,000 from Cruz Hernandez, a former client, without following the procedures required by rule 3-300 of the Rules of Professional Conduct. The probation period began on October 31, 2008.

The conditions of probation imposed by this 2008 Supreme Court order required Respondent to do, inter alia, the following:

1. Contact the Office of Probation and schedule a meeting with a probation deputy to discuss the terms and conditions of probation within 30 days of the effective date of discipline;

2. Submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the probation period, stating under penalty of perjury whether he has complied with the State Bar Act , the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter.
3. Pay restitution in the amount of \$31,000, with annual interest at the rate of ten percent accruing from June 5, 2008, to Cruz Hernandez, including making monthly payments in the amount of \$886.00 toward that restitution obligation. Restitution was required to be completed by a final payment made no later than October 31, 2011.

This Supreme Court order, including the monthly restitution obligation, resulted from a stipulation that Respondent had entered into with the State Bar in May 2008.

Notwithstanding Respondent's written agreement to comply with the conditions of his probation, once the Supreme Court's order was issued and became effective, Respondent failed completely to comply with the above conditions of probation. He did not contact the Office of probation by the specified deadline to schedule a meeting to discuss the terms and conditions of his probation; he failed to file his first six quarterly reports on a timely basis; and, most significantly, he failed to make any of the required monthly restitution payments.

On December 31, 2009, the Client Security Fund paid \$19,000 to Cruz Hernandez, which was the amount of principal owed by Respondent on the promissory note to Cruz Hernandez on that date.

Because of Respondent's failure to comply with the terms of his 2008 probation, new disciplinary charges were filed by the State Bar against Respondent in 2010 (case No. 10-O-02694). On October 20, 2010, Respondent entered into a new Stipulation Re Facts, Conclusions of Law and Disposition with the State Bar. On November 10, 2010, this court filed an order approving the stipulation and recommending to the California Supreme Court the discipline set forth in the stipulation.

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On March 30, 2011, the California Supreme Court filed an order (Supreme Court Order No. S189936) that Respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that Respondent be placed on probation for three years subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in its November 10, 2010 Order regarding the Stipulation, including the condition that Respondent be actually suspended for 30 days (Disciplinary Order).

Pursuant to the Disciplinary Order, Respondent was ordered to comply with the following terms and conditions of probation, among others:

1. Contact the Office of Probation and schedule a meeting with a probation deputy to discuss the terms and conditions of probation within 30 days of the effective date of discipline;
2. Submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the probation period, stating under penalty of perjury whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period;
3. Provide to the Office of Probation satisfactory evidence of completion of six hours of Minimum Continuing Legal Education (MCLE) approved courses in legal ethics within one year of the effective date of discipline; and
4. Provide satisfactory proof of \$900 monthly restitution payment to the Office of Probation with each quarterly report.

On March 30, 2011, the Clerk of the California Supreme Court properly served upon Respondent a copy of the Disciplinary Order. The Disciplinary Order became effective on April 29, 2011, thirty days after filing.

On May 17, 2011, the Office of Probation sent a letter with attachments to Respondent outlining all of the probation conditions. In this letter, the Office of Probation warned Respondent that failure to comply with probation conditions could result in additional discipline.

Although Respondent had just been disciplined for failing to comply with the probation condition that he schedule a meeting with the Office of Probation to discuss the terms and condition of his probation, and notwithstanding that he had signed a stipulation again agreeing to that obligation, Respondent once again failed to schedule a meeting with a probation deputy to discuss the terms and conditions of his probation. He could have accomplished both the scheduling obligation and the meeting itself by merely picking up a telephone. Instead, he sent an email message to his probation deputy on May 27, 2011, stating, "As you know, I live in the Dominican Republic. I unable [sic] to physically attend any meeting with you, as I cannot afford to fly to Los Angeles. I understand the terms of the probation and the consequences for nonperformance. I trust that there is no need to meet you face-to-face given my inability and circumstances."

Then, as he had done before, Respondent did not submit his first quarterly report by the due date of July 10, 2011. Nor did he submit his second quarterly report by the due date of October 10, 2011.

On October 27, 2011, the Office of Probation sent a second letter to Respondent, again reminding him of his terms and conditions of probation and informing him that he had not contacted the Office of Probation by May 29, 2011, and had not submitted his first and second quarterly reports.

Despite this effort by the Office of Probation to motivate Respondent into complying with the conditions of his probation, Respondent continued to ignore those conditions altogether. He did not submit the quarterly reports due on January 2012, April 2012, July 2012, October 2012, January 2013, and April 2013 when they were due. In fact, it was only after the NDC was filed in this proceeding that Respondent filed those reports on April 22, 2013, less than 10 days before the trial in this matter was scheduled to proceed.

Respondent also did not provide to the Office of Probation satisfactory evidence of completion of 6 hours of MCLE approved courses in legal ethics by the due date of April 29, 2012. Once again, it was only in mid-March 2013, after this matter was scheduled to go to trial, that he completed any of the required six hours of study. He did not submit proof of completion of all six hours until March 28, 2013, eleven months after the due date for doing so.

Most significantly, Respondent has not submitted proof that he has made payment of even a single dollar of restitution to his former client or the Client Security Fund. His testimony at trial makes clear that no such payments have ever been made.

At trial, Respondent sought to justify his failure to pay any restitution to his former client by claiming financial hardship. The evidence submitted by him in that regard was not persuasive. Respondent has relocated to the Dominican Republic, where he has been making a living as a consultant on issues of money laundering. The financial reports that he submitted in conjunction with this case show that his monthly revenues from his work in 2012, at a time when he testified that his revenues were down due to the poor economy, would sometimes exceed \$10,000. Nonetheless, not a single dollar of those funds was used to seek to comply with the Supreme Court's order.

Respondent testified and argued at trial that all of his income was required to meet his other expenses. That evidence, however, proved to be unreliable and unpersuasive. By way of example, his income statement reported a monthly expense for spousal support of \$2,000. When asked by the court during trial how much money he had actually paid in spousal support in 2012, he replied \$12,000, half of what his financial statement had suggested and apparently less than what the court in that dissolution matter had ordered.

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**Count 1 – Failure to Comply with Conditions of Probation [Bus. & Prof. Code,  
§ 6068, subd. (k)]**

Business and Professions Code section 6068, subsection (k), provides that it is the duty of every member to “comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.” Respondent’s conduct in failing to comply with the conditions of probation, set forth above, constituted a willful violation by him of this duty.

**Aggravating Circumstances**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)<sup>1</sup> The court makes the following findings with regard to possible aggravating factors.

**Prior Discipline**

As discussed above, Respondent has been disciplined on two prior occasions. The second discipline resulted from violating the conditions of probation imposed by the first discipline. Given the similarity and recurrence of the misconduct, this prior record of discipline is a significant aggravating factor. (Std. 1.2(b)(i); *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653 [“the greatest amount of discipline is warranted for violations of probation which show a breach of a condition of probation significantly related to the misconduct for which probation was given”].)

**Multiple Acts of Misconduct**

Respondent has violated his probation in multiple ways and at numerous times. This is an aggravating factor. (Std. 1.2(b)(ii).)

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<sup>1</sup> All further references to standard(s) or std. are to this source.

### **Lack of Insight and Remorse**

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. Despite the many efforts of the State Bar's disciplinary system to motivate and assist Respondent in complying with his professional obligations, including his duty to comply with orders of the Supreme Court, he has demonstrated an ongoing indifference to those duties. (Std. 1.2(b)(v).)

### **Mitigating Circumstances**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court makes the following findings with regard to possible mitigating factors.

#### **Cooperation**

Respondent entered into an extensive stipulation of facts and admitted at trial the fact that he had violated the conditions of his probation. This is a mitigating factor. (*In the Matter of Rose, supra*, 3 Cal. State Bar Ct. Rptr. at p. 653.)

#### **Emotional Difficulties**

The court declines to provide any mitigation credit for Respondent's emotional and financial difficulties.

Extreme emotional difficulties may be considered mitigating where it is established by expert testimony that they were responsible for the attorney's misconduct. (Std. 1.2(e)(iv); *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) The evidence offered by Respondent regarding the emotional difficulties he had in the past did not provide clear and convincing evidence that his problems are a mitigating factor here. There was no expert testimony, or other convincing evidence, showing the required nexus between Respondent's claimed emotional problems and his misconduct. Nor was there sufficient



evidence for this court to conclude that any emotional problems suffered by Respondent in the past have now been satisfactorily resolved.

Similarly, the court declines to find that Respondent's financial difficulties are a mitigating factor here. There was no evidence that his financial conditions are significantly different than when he stipulated in late 2010 to making monthly restitution payments to his former client. Moreover, his financial difficulties, whatever they are, do not explain his failure to comply with the other conditions of his probation.

### **DISCUSSION**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than 21 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

The State Bar contends that Respondent's disbarment is called for by both the case law and the standards, and that such is necessary to protect both the public and the profession. This court agrees.

Standard 2.6 provides that violation of certain provisions of the Business and Professions Code, including section 6068, must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim, with due regard for the purposes of discipline.

Standard 1.7(b) provides that when an attorney has two prior records of discipline, the degree of discipline in the current proceeding is to be disbarment unless the most compelling mitigating circumstances clearly predominate. There are no compelling mitigating circumstances warranting this court declining to follow the guideline of standard 1.7(b). To the contrary, the need for such a strong measure is especially warranted here, because of Respondent's continuing refusal to comply with his professional obligations, including his duties imposed by orders of the California Supreme Court.

Disbarment is also supported by the applicable case law. The cases make clear that where repeated sanctions and educational efforts of the disciplinary system do not succeed in motivating an attorney to comply with his or her professional obligations, including the obvious duty to obey an order of the Supreme Court, removing that individual from the practice of law is both appropriate and necessary to protect the public and the profession. (See, e.g., *In the Matter of Rose, supra*, 3 Cal. State Bar Ct. Rptr. 646, 653.) Such is the situation here.

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## **RECOMMENDED DISCIPLINE**

### **Disbarment**

The court recommends that respondent **Ruben F. Sanchez**, Member No. 118309, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys of all persons admitted to practice in this state.<sup>2</sup>

### **California Rules of Court, Rule 9.20**

The court further recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Ruben F. Sanchez**, Member No. 118309, be involuntarily enrolled as an inactive

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<sup>2</sup> The court will not recommend restitution in this matter, as Respondent remains under an obligations to comply with the restitution provisions ordered by the Supreme Court in Supreme Court matter S189936 (State Bar Court No. 10-O-02694).

member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)<sup>3</sup>

Dated: June \_\_\_\_\_, 2013.

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**DONALD F. MILES**  
Judge of the State Bar Court

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<sup>3</sup> An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or to even hold himself out as entitled to practice law. (*Ibid.*) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)